

NATIONAL LABOR RELATIONS BOARD
REGION 5
CHARLES L. POSNER, REGIONAL DIRECTOR

Case No. 05-RC-137335

In the Matter of:

VEOLIA TRANSPORTATION,	}	
	}	
	}	
Employer,	}	
	}	
	}	Re: Road Supervisors Petition
	}	for Representation
and	}	
	}	
LOCAL 689, AMALGAMATED TRANSIT	}	
UNION	}	
	}	
	}	
Petitioner (Union).	}	
	}	

PETITIONER UNION OPPOSITION TO
EMPLOYER REQUEST FOR REVIEW

Petitioner Amalgamated Transit Union Local 689 (hereinafter “Local 689” or the “Union”) duly filed a Petition with the Board under section 9(c) of the National Labor Relations Act. Local 689 was seeking to represent a unit of employees working as Road Supervisors and Lead Road Supervisors for the employer Veolia Transportation Services (hereinafter “Veolia” or the “employer”). A hearing was held on October 7, 2014 before Hearing Officer Jason Usher at the National Labor Relations Board facility at 1099 14th Street NW in Washington, DC. Following the submission of post hearing briefs by both parties, Regional Director Charles Posner issued a decision on October 27, 2014 which found that the Road Supervisors and the

Lead Road Supervisors were supervisors under section 2 (11) of the Act. Following the denial of the petition, Local 689 filed a Request for Review which was granted on April 21, 2015. The Board reversed the Regional Director's decision on May 12, 2016 and ruled that an election should be held to determine the appropriate bargaining unit. That election was held on July 1, 2016 whereby Local 689 was elected 11-0 to be the representative labor organization. The Employer filed objections to the election on July 8 and the Regional Director issued a Supplemental Decision on July 19, 2016 that confirmed the election results. On August 15, 2016 the Employer was granted leave to file a Request for Review of the Regional Director's Supplemental Decision and Certificate of Representative which they did so on that date. For the reasons set forth below, the Supplemental Decision and Certification should not be overturned.

ARGUMENT

The Employer argues on their opposition that:

- 1) The Union's interest was stale
- 2) The Union's own misconduct compelled setting aside the election results
- 3) Compelling reasons for reconsideration of board policy regarding the timing of a showing of interest

The Union opposes all of these arguments, however, the only one which needs a formal response is the second claim concerning alleged Union misconduct. Veolia (Transdev) argues that because the Department of Labor filed suit against Local 689 concerning allegations of election improprieties, the election held by the Road Supervisors is therefore invalid. That argument is completely illogical for a few reasons. One, while the Department did file a lawsuit against Local 689, the Union has answered the Complaint and denied the charges. The matter is currently before the United States District Court for the District of Maryland and a ruling has not

been issued at this time. A lawsuit being filed against a Union is obviously not the same as a Union being found to have violated parts of the LMRA by the Court. Secondly, the election at issue in the lawsuit was for the election of officers and representatives within the bargaining unit. This is a fundamentally different sort of election than one where a small group of unrepresented employees select a proper bargaining unit. Finally, the election which the Department of Labor filed suit concerning took place in many different locations across the entire WMATA system. Whereas the election for the Veolia employees was only at a two locations. These are two separate and distinct matters that have no relation to one another.

The Employer later states that the Union threatened one its own employees with discharge if she files a grievance. Amalgamated Transit Union, Local 689, 363 NLRB No. 43 (Dec. 1, 2015) First off, in that case the Union was acting as the employer not the bargaining unit for the person which is an entirely different set of circumstances. Most importantly there is no evidence that anyone at Veolia even knew about the existence of that matter. None of this “misconduct” that the Union supposedly engaged in has any relation to the matter at hand. Both the Department of Labor lawsuit and the separate NLRB case are distinct actions that have no bearing on the representative election held at Veolia. There is no evidence that anyone at Veolia even had knowledge of these two cases much less factored them in to their handling of the representative election. They have had no impact on the proceedings and the request for review should be denied.

Respectfully submitted,

_____/s/ Brian Connolly_____
Brian Connolly
Douglas Taylor

Gromfine, Taylor & Tyler
1420 King Street, Suite 500
Alexandria, VA 22314

(703) 683-7782
dtaylor@lbgt.com
bconnolly@lbgt.com

Certificate of Service

I hereby certify that a copy of the foregoing Opposition to the Request for Review on behalf of the Union was emailed to Jim Foster, Esq. and Dean Kpere-Daibo, Esq. this 19th day of August 2016, to foster@mcmahonberger.com and dkd@mcmahonberger.com

_____/s/ Brian Connolly_____
Brian Connolly